

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SHELA CAMENISCH, et al.,  
Plaintiffs,  
v.  
UMPQUA BANK,  
Defendant.

Case No. [20-cv-05905-RS](#) (AGT)

**DISCOVERY ORDER**

Re: Dkt. No. 47

The suspicious activity report (SAR) privilege applies to only some of the 136 documents that Umpqua Bank submitted for *in camera* review. Umpqua has apparently objected to producing some of the 136 documents based on additional, non-SAR-privilege grounds. *See* Dkt. 47 at 3. The Court wasn't asked to consider those objections, and so won't overrule or sustain them or order Umpqua to produce the withheld documents at this time. The bank, however, can no longer withhold certain documents based on the SAR privilege.

**A. Relevant Legal Principles**

If a bank detects money laundering or other illegal conduct, it typically must file a SAR with the appropriate federal authorities. *See* 12 C.F.R. § 21.11(a), (c). As relevant here, “[a] SAR, and any information that would reveal the existence of a SAR, are confidential, and shall not be disclosed.” *Id.* § 21.11(k) (Office of the Comptroller of the Currency regulation); *see also* 31 C.F.R. § 1020.320(e) (nearly identical regulation from the Financial Crimes Enforcement Network).

Only one circuit court has considered the scope of this “privilege” in detail. In *In re JPMorgan Chase Bank, N.A.*, 799 F.3d 36, 39–41 (1st Cir. 2015), the First Circuit reviewed the governing regulations, agency guidance, and several district court decisions. It then explained that under the existing law and guidance, “the key query” to be used to determine if a document is protected by the privilege is whether the document “suggest[s], directly or indirectly, that a SAR

1 was or was not filed.” *Id.* at 43.

2 Umpqua cites *JPMorgan Chase*, but the bank also champions a somewhat broader  
3 interpretation of the privilege. It suggests that once a bank begins to investigate suspicious activity,  
4 any documents generated during that investigation should be protected. *See* Dkt. 47 at 4. The  
5 problem with this approach is that it’s less faithful to the text of the governing regulations. Not  
6 every document that a bank prepares during a suspicious-activity investigation “[will] reveal the  
7 existence of a SAR,” 12 C.F.R. § 21.11(k), 31 C.F.R. § 1020.320(e), or otherwise “suggest, directly  
8 or indirectly, that a SAR was or was not filed,” *JPMorgan Chase*, 799 F.3d at 43. Some bank-  
9 prepared documents may simply aggregate relevant account or transactional information, flag  
10 potentially suspicious activity that needs to be investigated further, or explain what steps need to be  
11 taken as part of that investigation. Documents like these may reflect the bank’s due diligence, but  
12 they won’t always shed light on whether or not a SAR was filed.

13 The First Circuit similarly “decline[d] Chase’s invitation to view the ‘privilege’ as extending  
14 to any document that might speak to the investigative methods of financial institutions.” *Id.* at 44.  
15 Noting that Chase’s approach “would see the bulk of a financial institution’s investigative file in a  
16 particular case shielded from discovery,” the court reasoned that “Congress and/or the agencies  
17 certainly would have used broader, less specific language had that been their intent.” *Id.* This Court  
18 agrees. Consistent with the governing regulations, the key query isn’t whether a document was  
19 prepared during a bank’s suspicious-activity investigation, but whether it “suggest[s], directly or  
20 indirectly, that a SAR was or was not filed.” *Id.* at 43.

## 21 B. Application

22 1. The SAR privilege applies to document nos. 1–9, 20, 22, and 32. These documents are  
23 Umpqua-prepared spreadsheets, investigation worksheets, related write-ups, and emails, all of  
24 which are evaluative in nature. They suggest, directly or indirectly, that a SAR was or was not filed.

25 2. The SAR privilege doesn’t apply to document nos. 10–17, 19, 21, 23–31, or 33–136.  
26 These documents are reports, emails, and screenshots of Umpqua’s banking system. They compile  
27 account information (e.g., customer contact information, account balances, tax identification  
28 numbers), reflect an information-gathering process, or reflect initial reports of unusual activity.

1 They capture bank due diligence efforts, but they don't suggest, directly or indirectly, that a SAR  
2 was or was not filed.

3 3. The one remaining document, no. 18, is a spreadsheet that identifies suspicious-activity  
4 alerts generated by an Umpqua-utilized automated alert system. Umpqua doesn't assert that the  
5 spreadsheet is protected by the SAR privilege. The bank instead represents that it has already  
6 produced a copy of the spreadsheet.

7 C. Conclusion

8 The SAR privilege applies to 12 of the 136 documents that Umpqua submitted for *in camera*  
9 review. As to those 12 documents (nos. 1–9, 20, 22, and 32), Umpqua must withhold them. *See*  
10 *JPMorgan Chase*, 799 F.3d at 39–40 (“District courts have extrapolated from the [SAR] statute and  
11 regulations ‘an unqualified discovery and evidentiary privilege that . . . cannot be waived.’”  
12 (omission in original) (citing *Whitney Nat. Bank v. Karam*, 306 F. Supp. 2d 678, 682 (S.D. Tex.  
13 2004))). As to the other documents, the parties must meet and confer to discuss Umpqua's  
14 remaining objections.

15 **IT IS SO ORDERED.**

16 Dated: September 14, 2021

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19 ALEX G. TSE  
20 United States Magistrate Judge  
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